

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

Petition for Rulemaking to Define “Captured” )  
and “New” Subscribers For Purposes of )  
Receiving Universal Service Support, )  
Pursuant to 47 C.F.R. § 54.307 *et seq.* )

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RM-10522

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

**NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION**

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## SUMMARY

Wireless carriers have painstakingly avoided addressing the critical issue of defining a “captured” and “new” customer for purposes of accurately distributing universal service support to competitive carriers pursuant to rule 47 C.F.R. § 54.307. Wireless carriers understand all too well, that if the Commission defines the terms “captured” and “new” customers as it intended, the windfalls in which they can receive as a result of the loophole in the rules will be significantly constrained.

The Commission’s intent behind the words “captured” and “new” customers for purposes of distributing universal service support to competitive eligible telecommunications carriers (CETCs) is unambiguous:

A CLEC that qualifies as an eligible telecommunications carrier shall receive support to the extent that it **captures subscribers formerly served by carriers receiving support** based on the modified existing support mechanisms or **adds new customers in the ILEC’s study area**. We conclude that paying the support to the competitive eligible telecommunications carrier that **wins the customer or adds a new subscriber** would aid the entry of competition in rural study areas. [Emphasis added].

The Commission is perfectly clear in that if a rural ILEC serves the customer first, it should receive support for that customer. NTCA’s petition for expedited rulemaking does nothing more than close a loophole in the Commission’s existing rules that, unless closed, will jeopardize the preservation and advancement of universal service in high-cost areas in America.

NTCA seeks the same clarity in the rules that the Universal Service Administrative Company (USAC) seeks. USAC has also requested the Commission to clearly define the term “capture.” It has specifically asked the question, does the term “capture” mean only instances

where the subscriber abandoned the ILEC's service for the CETC? Based on the Commission's statement above that is precisely what the Commission meant when it adopted the rule. It is clear that the Commission never intended that wireless CETCs should receive duplicative support for voice service subsequently added on to longstanding wireline voice service of existing rural ILEC customers. The Commission unmistakably envisioned that a CETC should only receive support in a "captured" customer situation when the customer abandons its ILEC service and substitutes its with CETC service. Because the current rule does not define a "captured" customer, wireless CETCs discovering this loophole in the rule are lining up to take as much duplicative support as possible. The Commission cannot afford to let this continue.

NTCA's proposed definitions of "captured" and "new" subscribers, "customer billing address" and Duplicative Support Prevention Rule will ensure that when a customer receives service from one or more eligible carriers, the carrier that provides service first to the customer receives the support until it is displaced. The adoption of the proposed definitions and rule will also ensure the intent behind the rule and will minimize, if not eliminate, the impending abuse by wireless CETCs that would otherwise occur while the Commission plans its broader rulemaking on portability over the next several months. NTCA's proposed interim safeguards will further allow the Commission to focus on the broader portability issues knowing that it has closed a significant loophole in the rules preserving the integrity of the universal service mechanisms and the future viability of adequate, affordable, and advanced telecommunications services in hard to serve rural, high-cost, and insular areas in the United States.

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RM-10522

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

The National Telecommunications Cooperative Association<sup>1</sup> (NTCA), hereby submits its reply comments in the above-captioned proceeding. As demonstrated in their initial comments, wireless carriers have painstakingly avoided addressing the critical issue of defining a “captured” and “new” customer for purposes of accurately distributing universal service support to competitive carriers pursuant to rule 47 C.F.R. § 54.307. They understand all too well, that if the Commission defines the terms “captured” and “new” customers as it intended, there will be a limit on the windfalls in which they are receiving as a result of the loophole in the rules.

The Commission’s intent behind the words “captured” and “new” customers for purposes of distributing universal service support to competitive eligible telecommunications carriers (CETCs) is unambiguous:

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 555 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). And all of NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

A CLEC that qualifies as an eligible telecommunications carrier shall receive support to the extent that it **captures subscribers formerly served by carriers receiving support** based on the modified existing support mechanisms or **adds new customers in the ILEC's study area**. We conclude that paying the support to the competitive eligible telecommunications carrier that **wins the customer or adds a new subscriber** would aid the entry of competition in rural study areas.<sup>2</sup> [Emphasis added].

The Commission is perfectly clear in that if a rural ILEC serves the customer first, it should receive support for that customer. This approach promotes the goal of universal service by correcting the popular but false notion that support is intended to artificially induce competition in rural areas instead of its true goal of maintaining comparable rates and services between urban and high-cost rural areas. NTCA's petition for expedited rulemaking does nothing more than close a loophole in the Commission's existing rules that, unless closed, will jeopardize the preservation and advancement of universal service in high-cost areas in America.

NTCA's proposed definitions of "captured" and "new" subscribers, "customer billing address" and Duplicative Support Prevention Rule will ensure that when a customer receives service from one or more eligible carriers, the carrier that provides service first to the customer receives the support until it is displaced. The adoption of the proposed definitions and rule will also ensure the intent behind the rule and will minimize, if not eliminate, the impending abuse by wireless CETCs that would otherwise occur while the Commission plans its broader rulemaking on portability over the next several months.<sup>3</sup> NTCA's proposed interim safeguards will further

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<sup>2</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶ 311 (rel. May 8, 1997).

<sup>3</sup> Commissioner Abernathy has indicated that the Commission is planning a rulemaking to focus on the question of whether commercial mobile radio service (CMRS) providers should receive universal service support based on the ILEC's costs. Commissioner Abernathy has also indicated that it may be several months before the Commission is able to launch the rulemaking proceeding. *Separate Statement of Commissioner Kathleen Q. Abernathy, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02j-01, p. 41 (rel. Jul. 10,

allow the Commission to focus on the broader portability issues knowing that it has closed a significant loophole in the rules preserving the integrity of the universal service mechanisms and the future viability of adequate, affordable, and advanced telecommunications services in hard to serve rural, high-cost, and insular areas in the United States.

## **I. STATE ASSOCIATIONS AND OTHERS SUPPORT NTCA'S PETITION**

The Texas Statewide Telecommunications Cooperative, Alaska Telephone Association, Utah Rural Telecom Association, New York State Telecommunications Association, and the Rural Iowa Independent Telephone Association all support of NTCA's request for an expedited rulemaking.<sup>4</sup> They understand that, in the long run, consumers will not benefit from a loophole in the rules that allows CETCs unfettered access to duplicative support. They also recognize that the public will be harmed by rules that view high-cost support and common line access support as opportunities to create artificial competition instead of staining affordable and comparable service in high-cost rural and insular areas. Indeed, Congress intended universal service support to enable consumers living in high-cost rural areas to receive comparable telecommunications services and rates when compared to consumers living in low-cost urban areas of the United States.<sup>5</sup> Congress certainly never intended for wireless carriers to use duplicative universal service support as the foundation for unfair competition in rural areas. The Commission therefore should address the improper distribution of CETC duplicative support by adopting expeditiously NTCA's proposed definitions and rule which will prevent the current abuse of the universal service mechanisms.

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2002).

<sup>4</sup> See also, the Comments of Verizon, CenturyTel, Minnesota Independent Coalition and The Rural Independent

## **II. NTCA PROPOSED DEFINITIONS AND RULE ARE COMPETITIVELY NEUTRAL, EQUITABLE, AND NON-DISCRIMINATORY**

Wireless carriers claim that NTCA's petition for rulemaking is an attempt to secure the rural local exchange market by discriminating against wireless CETCs competing in rural ILEC service areas.<sup>6</sup> Their claim is completely false. CUSC in particular provides three loosely worded hypotheticals to attempt to substantiate their fictitious assertion.

In its first hypothetical, CUSC claims that under NTCA's proposal if a customer purchases primary data service from the ILEC and primary voice service from the CETC, only the ILEC would receive universal service support. By contrast, CUSC claims that if the customer purchased both lines from the ILEC, the ILEC would receive support for both of them.<sup>7</sup> Neither outcome in this hypothetical is true.

First, universal service support is provided to carriers that provide the nine supported services, which includes voice service.<sup>8</sup> Second, universal service support is intended to flow to eligible carriers that have "captured" customers or provide service to "new" customers. Third, if a wireless CETC "captured" an ILEC customer, consistent with the Commission's intent when it adopted the rules, and substituted the ILEC's wireline voice service with the CETC's wireless voice service, the CETC would receive support for that "captured" customer. Fourth, if a wireless CETC provides service first to a "new" customer in a rural ILEC service territory, the wireless CETC would receive support for that "new" customer. The CETC has "captured" an

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Carrier Alliance filed in RM-10522, which support specific issues raised in NTCA's petition.

<sup>5</sup> See, Section 254 of the Telecommunications Act of 1996.

<sup>6</sup> See, Comments of the Competitive Universal Service Coalition (CUSC), RM-10522, pp. 1-3 (September 23, 2002), *see also*, the Comments of Sprint Corporation, RM-10522, pp. 2-4 (September 23, 2002).

<sup>7</sup> *Id.*, p. 2.

<sup>8</sup> 47 C.F.R. § 54.101 lists the supported services for rural and high-cost areas.



exiting rural ILEC customer or won a “new” customer in the rural ILEC study area as intended by the Commission. NTCA’s petition therefore would provide the same support to the CETC as it would to the rural ILEC for a “captured” or “new” customer in a fair and non-discriminatory manner.

CUSC’s second hypothetical argues that under NTCA’s petition if a customer purchases primary voice and data service from the CETC, and another line from the ILEC, only the ILEC receives universal service support. By contrast, CUSC asserts that if the customer purchased all three lines from the ILEC, the ILEC would receive support for all three lines.<sup>9</sup> CUSC’s interpretation of NTCA’s petition in this hypothetical is also incorrect on both points.

This hypothetical is missing a critical and determining factor - when did the customer take service from the ILEC and CETC? If the customer takes service from the CETC first, then the CETC gets the support and the ILEC is providing add on service. This outcome is again consistent with the Commission original intent when it adopted the rules.

CUSC third hypothetical claims that according to NTCA’s petition when a “new” customer requests service from an ILEC, the carrier can expect to receive support regardless of any business relationships that the customer has with other carriers. But if a new customer requests service from a CETC, CUSC claims the CETC would not receive support unless the customer is not purchasing service from any other carrier. CUSC further claims that if the customer subsequently purchases service from the ILEC, the CETC would lose support even if it continues to provide service to the customer.<sup>10</sup>

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<sup>9</sup> *Id.*, p. 2.

<sup>10</sup> *Id.*, pp. 2-3.

CUCS's third hypothetical is also false on all three counts. NTCA's proposed rules address the "new" customer issue directly in a competitively neutral and non-discriminatory manner. A "new" customer is fair game to both the ILEC and CETC. It is a race to serve the customer first. Whichever carrier provides the nine supported services to the customer first receives the support. This prevents duplication of support to more than one carrier serving the same customer at the same time. A CETC "shall receive support to the extent that it captures subscribers formerly served by carriers receiving support ... or adds a new subscriber ... in rural study areas."<sup>11</sup>

NTCA's proposed definitions and duplicative support prevention rule are also entirely consistent with the Commission's principle of "competitive neutrality." This principle requires that "universal support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another."<sup>12</sup> The Commission's CETC support distribution rules are based on which carrier provides supported services to the customer first, regardless of whether it is a wireless, wireline or some other form of provider. If a carrier wins the race to get the customer's business, it receives the support for that customer. NTCA's proposal would ensure that all providers and technologies are treated equally in their efforts to provide supported services to "captured" and "new" customers in rural areas of America.

CUSC also incorrectly claims that NTCA is wrong to suggest that the terms "captured"

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11 *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶ 311 (rel. May 8, 1997).

12 *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶¶ 47-50 (rel. May 8, 1997).

and “new” customers have never been defined or addressed by the Commission.<sup>13</sup> NTCA does not assert that the Commission has never addresses these terms in an order. Indeed, the Commission has exactly done that in the text of its 1997 order, which adopted the rule and where it specifically stated:

A CLEC that qualifies as an eligible telecommunications carrier shall receive support to the extent that it ***captures subscribers formerly served by carriers receiving support*** based on the modified existing support mechanisms or ***adds new customers in the ILEC’s study area***. We conclude that paying the support to the competitive eligible telecommunications carrier that ***wins the customer or adds a new subscriber*** would aid the entry of competition in rural study areas.<sup>14</sup>

What NTCA seeks in its petition for expedited rulemaking is for the Commission to include the above definitions of “captured” and “new” customers into the actual rules to close the loophole and prevent further abuse of the universal service support mechanisms by wireless CETCs.

NTCA seeks in its petition the same clarity in the rules that Universal Service Administrative Company (USAC) seeks.<sup>15</sup> USAC has also requested the Commission to clearly define the term “capture.” It has specifically asked the question, does the term “capture” mean only instances where the subscriber abandoned the ILEC’s service for the CETC? Based on the Commission’s statement above that is precisely what the Commission meant when it adopted the rule. It is clear that the Commission never intended that wireless CETCs should receive duplicative support for voice service subsequently added on to longstanding wireline voice service of existing rural ILEC customers. The Commission unmistakably envisioned that a

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<sup>13</sup> *Comments of CUSC*, RM-10522, p. 5 (September 23, 2002).

<sup>14</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶ 311 (rel. May 8, 1997)[Emphasis added].

<sup>15</sup> *See*, letter sent to Irene Flannery, Chief, Accounting Policy Division, Federal Communications Commission from Robert Haga, Secretary & Treasurer, Universal Service Administrative Company.

CETC should only receive support in a “captured” customer situation when the customer abandons its ILEC service and substitutes it with CETC service. Because the current rule does not define a “captured” or “new” customer, wireless CETCs discovering this loophole in the rule are lining up to take as much duplicative support as possible. The Commission cannot afford to let this continue.

### **III. NTCA’S PETITION WOULD PROVIDE SUPPORT TO CETCS FOR “CAPTURED” AND “NEW” CUSTOMERS**

#### **a. Claims That NTCA’s Petition Would Prevent Support To CETCs Are False**

Wireless carriers claim that NTCA’s petition would prevent the flow of universal service support to wireless CETCs providing service in rural ILEC service areas.<sup>16</sup> This claim is false.

Wireless carriers rely on a statement made in the Commission’s October 21, 2001, Wyoming CETC reconsideration decision which states:

[T]he federal universal service mechanisms support all lines served by eligible telecommunications carriers in high cost rural areas. Thus, to the extent that a competitive ETC provides new lines to customers that are currently unserved or second lines that have service, there will be no reduction in support to the incumbent carriers.<sup>17</sup>

The Wyoming decision was not a rulemaking and the Commission did not give any notice that it intended to change its 1997 intent before it decided the Wyoming case. Moreover, wireless carriers fail to point out that the CETC lines referenced in this statement would have to be lines acquired from a “captured” ILEC customer or lines provided to a “new” customer in the ILEC’s

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16 See, *Comments of the Alliance of Rural CMRS Carriers (ARC)*, RM-10522, (September 23, 2002), *Comments of CUSC*, RM-10522 (September 23, 2002) and *Comments of Smith Bagley, Inc.*, RM-10522 (September 23, 2002).

17 Federal-State Joint Board on Universal Service, Petition for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration, 16 FCC 19144, 19152 (October 21, 2001).

service area as required by the rule.<sup>18</sup> The rule further requires that a CETC using its own facilities to provide supported services “will receive the full amount of universal service support *previously* provided to the local exchange carrier for *that customer*.”<sup>19</sup>

NTCA’s proposed definitions and rule would allow CETCs to receive support for all “captured” and “new” customers in an ILEC’s service area. The proposed definitions and rule are consistent with the Commission’s statements when it adopted the CETC support distribution rule, which states that a CETC “shall receive support to the extent that it captures subscribers formerly served by carriers receiving support ... or adds a new subscriber would aid the entry of competition in rural study areas.”<sup>20</sup> NTCA proposal would therefore provide universal service support to CETC lines of “captured” or “new” customers.

**b. NTCA’s Petition Does Not Address Or Disturb Existing Rules On Primary And Secondary Lines**

CenturyTel is concerned that the petition for rulemaking may possibly result in denying support to second lines.<sup>21</sup> This is not the case. NTCA’s petition is aimed at establishing an interim stopgap measure that addresses a growing problem created by the Commission’s failure to define the terms under which competitors may receive support for lines already served. As other parties here indicate, the broader issues related to portability will not doubt be considered in the broader proceeding that the Commission has announced.

**IV. NTCA’S PETITION IS ENTIRELY CONSISTENT WITH THE INTENT OF SECTION 254 AND THE RTF ORDER**

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<sup>18</sup> 47 C.F.R. §54.307(a).

<sup>19</sup> 47 C.F.R. §54.307(a)(4).

<sup>20</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶311 (rel. May 8, 1997).

<sup>21</sup> *Comments of CenturyTel*, RM-10522, pp. 2-6 (September 23, 2002).

Wireless carriers argue erroneously that NTCA's proposed definitions and rule would rescind the compromise of the Rural Task Force (RTF) plan.<sup>22</sup> The problems created by the failure to define "captured" and "new" arise from orders that predate the RTF Order. This petition addresses a fundamental distortion of the intent of Section 254. That distortion is the notion that support should be used to artificially create competition and entice multiple carriers to provide service where the economies does not justify it and where rates and services would not be comparable but for support. They claim falsely that NTCA seeks to destroy the compromise intended to ensure a stable regulatory environment with predictable levels of universal service support for the next five years.<sup>23</sup> To the contrary, NTCA proposal would enforce the RTF compromise and ensure the viability, stability, and predictability of the universal service mechanisms.

Wireless CETCs know that if the loophole in the universal service support rules remains open, they can continue to abuse the system and reap millions of dollars in duplicative universal service support for many years to come. They currently can obtain high-cost support for existing ILEC subscribers regardless of their costs and without ever verifying whether their customers have actually discontinued their longstanding ILEC service. There is no requirement that the customer addresses, which are used by mobile CETCs to identify service locations, match names or involve service in the ILEC's service area. The opportunity to gain access to high-cost support is therefore irresistible and when a wireless CETC receives duplicative universal service

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<sup>22</sup> *Comments of ARC*, pp. 14-17, RM-10522, (September 23, 2002), *Comments of CUSC*, p. 28, RM-10522 (September 23, 2002).

<sup>23</sup> *Id.*

support under these circumstances it is a pure windfall.<sup>24</sup>

Duplicative support is harmful not only to regulatory stability and universal service support predictability, but its also harmful to the public in general. As Commissioner Martin stated:

I am hesitant to subsidize multiple competitors to serve areas in which the costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area leading to inefficient and/or stranded investment and a ballooning universal service fund.”<sup>25</sup>

Distributing duplicative support to CETCs that provide additional voice service to existing rural ILEC voice customers has already lead to the rapid ballooning of the high-cost universal service fund and can be expected to result in the eventual degradation of service quality in low-density, high-cost rural study areas. USAC projects \$76.4 million in CETC support for 3rd quarter 2002, and unless the rules are revised duplicative support is expected to grow significantly over the next year.<sup>26</sup> Duplicative support has no role in the RTF plan or in the maintenance and advancement of universal service in high-cost areas.

The harmful effects of the lack of definition of “captured” and “new” customers has also added to the growing level of investment uncertainty in rural communities and in the United States as a whole. As Commissioner Copps understands:

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24 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5<sup>th</sup> Cir. 1999) (“Excessive funding may itself violate the sufficiency of the Act”).

25 *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal Service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation* CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers* CC 98-166, FCC 01-304, ¶142 (rel. November 8, 2001) (*MAG Order*), *Separate Statement of Commissioner Kevin J. Martin*. (*MAG Order*), *Separate Statement of Commissioner Kevin J. Martin*.

26 NTCA’s Petition for Expedited Rulemaking, p. 11 (July 26, 2002).

It is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.<sup>27</sup>

Because of the loophole in the rules, rural ILECs must now consider whether to limit their investments because they know the more they invest to maintain and upgrade their networks the more attractive high-cost support and ICLS becomes to unregulated CETCs considering entry into their markets. The available high-cost support and ICLS is essentially ill gotten gains for many wireless CETCs that neither show their costs nor demonstrate that support they receive is advancing universal service in any way. The Commission therefore needs to define terms and clarify its rules in order to ensure that the goals of RTF plan are achieved. The expeditious adoption of NTCA's proposed definitions and rule will provide the Commission with interim safeguards that will allow it to focus on the broader portability issues knowing that it has closed a significant loophole and preserved the integrity of the universal service mechanisms.

**V. NTCA'S PROPOSAL WOULD PROVIDE WIRELESS CETCS WITH SUPPORT FOR "PREVIOUSLY UNSERVED CUSTOMERS"**

Smith Bagley suggests that NTCA's petition is anti-competitive and that if adopted would somehow prevent support flowing to its operations where it has added 23,000 new subscribers to the Navajo, Hopi, and Apache reservation lands since 1999.<sup>28</sup> Nothing could be further from the truth. In fact, NTCA's definition of a "new" subscriber ensures that Smith Bagley would continue to receive support for its existing 23,000 new subscribers and any additional "new" or "captured" subscribers that it provides to customers living on Native American lands. Again, if a wireless CETC provides service to the customer first, it gets the

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<sup>27</sup> MAG Order, *Dissenting Statement of Commissioner Michael J. Copps*.



support. NTCA's proposal is consistent with the Commission's intent, the RTF Order and the Act.

ARC also inserts in its comments an incident that allegedly occurred a few weeks ago where a man living in a rural area of the state of Washington died of an apparent heart attack.<sup>29</sup> ARC then claims "only through the introduction of CETCs into these areas will customers receive improved service and 911 connectivity." This suggests that only a wireless CETC could have helped save this man. In January 2000, however, almost three years before this alleged incident occurred, the Washington Utilities and Transportation Commission granted U.S. Cellular CETC designation in many rural service areas throughout the state.<sup>30</sup> Obviously, just granting a wireless carrier CETC status in a rural service area does not guarantee that the wireless CETC will provide service to all unserved consumers living in rural America.

NTCA's petition would likely accelerate the deployment services to unserved consumers because it would provide support to any CETC or rural ILEC that provides service to the unserved customer first. It therefore creates an incentive for each competing carrier to get service to the customer as fast as possible. The faster service gets to consumers, the greater the opportunity for consumers to use the services to contact community public safety institutions. NTCA's proposal therefore provides an incentive and an equal opportunity to every carrier to provide service to unserved consumers living in America.

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28 *Comments of Smith Bagley*, pp. 3-4 (September 23, 2002).

29 *Comments of ARC*, pp. 27-28 (September 23, 2002).

30 *In the Matter of United States Cellular Corporation's Request for Designation as an Eligible Telecommunications Carrier*, Third Supplemental Order Granting Petition for Eligible Telecommunications Carrier Status, Docket No. UT-970345, Washington Utilities and Transportation Commission (January 2000).

## **VI. THE COMMISSION SHOULD ELIMINATE THE “IDENTICAL SUPPORT RULE” AS PART OF ITS BROAD PROCEEDING ON PORTABILITY**

NTCA supports the state associations and other parties that are requesting reconsideration of the “identical support rule.”<sup>31</sup> In fact, NTCA has already requested reconsideration of the rule in the MAG order.<sup>32</sup> The current rule allows for the disbursement of high-cost support and Interstate Common Line Support (ICLS) to a CETC based on the rural ILEC’s costs, not the CETC’s own costs. The rule therefore permits CETCs to obtain high-cost support and ICLS regardless of the nature or level of their costs.

Section 254(e) requires that CETCs only receive “sufficient” support and “use the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Without a demonstration of their costs, CETCs can easily game the system:

by ‘entering’ a service territory as an eligible telecommunications carrier (ETC) using a combination of its own low cost facilities, where beneficial to the CETC, and resale of the ILEC’s retail services where facilities-based service is not cost effective. Thus, ... a wireless carrier ... could obtain ETC status without incurring the costs, or providing the quality of service comparable to the ILEC’s, and yet obtain per-line support at the ILEC’s level. The ILEC’s per line support would represent costs far in excess of those associated with the CETC’s costs or service. The CETC effectively could receive a windfall...<sup>33</sup>

The rule ignores a CETC’s real costs as well as the fact that the underlying customer may

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31 See, Comments of the New York State Telecommunications Association, pp. 3-6 (September 23, 2002), Comments of the Alaska Telephone Association, pp. 1-3 (September 23, 2002), Comments of the Utah Rural Telecom Association, pp. 2-3 (September 9, 2002), Comments of the Texas Statewide Telephone Cooperative Inc., (September 23, 2002), Comments of the Rural Iowa Independent Telecom Association, pp. 2-4 (September 9, 2002), Comments of the Minnesota Coalition (September 9, 2002), and Comments of the Rural Independent Competitive Alliance (RICA), pp. 2-5 (September 23, 2002).

32 NTCA Petition for Reconsideration in the Multi-Association Group (MAG) Order, CC Docket 00-256 (December 31, 2001).

33 Comments of the Montana Telecommunications Association, CC Docket 96-45, filed November 3, 2000, pp. 3-4.

already receive supported services from one or more providers in addition to the services received from a newly designated CETC. The rule permits CETCs to obtain support for the provision of wireline working loops regardless of whether a CETC provides loops or incur common line costs. Under this regime, a wireless CETC with no common line loop costs and no obligation to pass the benefits on to consumers can easily receive “excessive” support and readily gain an unfair competitive advantage.

The rule effectively undermines the Commission’s ability to enforce Section 254(e). The Commission therefore should require CETCs seeking support to show their costs before receiving support. This will enable the Commission to ensure that CETC support is not excessive and is being used for the purposed intended. Currently, if an ILEC is unwilling to demonstrate its costs, the ILEC does not receive support. There is no reason why a CETC should not be held to the same standard as a rural ILEC. “Requiring incumbent LECs, but no one else, to comply with costly regulations and to open their books to competitors raises obvious questions of competitive neutrality.”<sup>34</sup>

The Act provides that all Americans have access to adequate telecommunications services at reasonable and affordable charges.<sup>35</sup> It does not provide that every unregulated CETC should receive the identical amount of universal service support that the rural ILEC receives. The Commission cannot simply assume or pretend that support to wireless CETCs is

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34 Separate Statement of Commission Kathleen Q. Abernathy, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, FCC 01-305, In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting, p. 2 (rel. November 5, 2001).

35 47 U.S.C. § 151.

not excessive and that they are using the support for the purposes intended. By doing so, the Commission cannot ensure CETC compliance with the Act or the preservation of universal service. The Commission therefore should reconsider and eliminate the “identical support rule” in its upcoming broad proceeding on the portability.

## **VII. CONCLUSION**

The undefined terms in current rules have resulted in: (1) the public waste of tens of millions of dollars in the form of duplicative universal service support to unregulated CETCs over the first three quarters of 2002, (2) windfalls of millions of high-cost support dollars to CETCs who have neither demonstrated their costs nor justified their need for support, (3) increased investment uncertainty for rural ILECs, (4) the uncontrolled ballooning of the high-cost support and ICLS funds, and (5) an environment in which carriers are deciding to compete in rural ILEC service areas on the basis of duplicative support instead of market factors.

The Commission should therefore open an immediate rulemaking to adopt and incorporate NTCA’s proposed definitions and rule. The implementation of these safeguards should take place before the Commission conducts its general proceeding into “portability” later this year or next year. The adoption of the proposed definitions and rule will save consumers millions of dollars over the next several quarters and ensure the sustainability of universal service at the same time. NTCA’s proposed safeguards will also allow the Commission to focus on the

broader portability issues knowing that it has closed a significant loophole in the rules preserving the integrity of the universal service mechanisms.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association was served on this 7<sup>th</sup> day of October 2002 by first-class, U.S. Mail, postage prepaid, to the following persons.

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